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10/584,876	06/29/2006	Anthony Bonnet	FR-AM2003 NP	7921
31684	7590	10/07/2009		
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EXAMINER				
PAUL, JESSICA MARIE				
ART UNIT		PAPER NUMBER		
1796				
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10/07/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/584,876

Applicant(s)

BONNET ET AL.

Examiner

Jessica Paul

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 24-29, 32-34, 37, 38 is/are pending in the application.
- 4a) Of the above claim(s) 14-20, 24-29, 32-34, 37, 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-083)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 recites the limitation "content of metal salt" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. For purposes of further examination, the Office interprets this to be dependent on claim 3.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The inclusion of a trademark, e.g. Irganox®, renders the claim indefinite because the relationship between a trademark and the product it identifies is sometimes indefinite, uncertain, and arbitrary. The formula or characteristics of the product may change from time to time and yet it may continue to be sold under the same trademark. In patent specifications, every element or ingredient of the product should be set forth in positive, exact, intelligible language, so that there will be no uncertainty as to what is meant. Arbitrary trademarks that are liable to mean different things at the pleasure of manufacturers do not constitute such language. *Ex Parte Kattwinkle*, 12 USPQ 11 (Bd. App. 1931).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Dahl et al. (WO 90/15828).

Regarding claims 1-3, 9, and 10: Dahl et al. teaches radiation grafting of ETFE with ethyl acrylate. ETFE resin powder (fluoropolymer) and ethyl acrylate (compound containing a single C=C double bond) were heated (melt blending, instant step a) in the presence of 2.5% Irganox® 1010 (antioxidant stabilizer, instant claims 2, 3, 9, and 10). The resin product was filtered and dried (reads on granules or powder, instant step b), then irradiated with electrons to a total dose of 12 Mrads (instant step c). The product was then washed with diisobutyl adipate (instant step d) [p16, line1-15; ex4].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl et al. (WO 90/15828), as applied to claim 1 above.

Dahl et al. discloses the basic claimed method for radiation grafting, as set forth above, with respect to claim 1.

Regarding claim 4; Dahl et al. fails to teach the stabilizer blended into the fluoropolymer after the irradiation. However, the selection of any order of mixing ingredients is a prima facie case of obviousness in the absence of new or unexpected results. See *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946) and *In re Gibson*, 39 F.2d 975, 5 USPQ 230 (CCPA 1930). Therefore, it would have been obvious to one having ordinary skill in the art, at the time of the invention, to add the stabilizer prior to or after irradiation, and still achieve the same expected outcome of results.

Regarding claim 11; Dahl et al. fails to teach the antioxidant content is 0.001 to 2% of the fluoropolymer. The experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. See *In re Aller*, 105 USPQ 233. At the time of the invention a person having ordinary skill in the art would have found it obvious to optimize the amount of antioxidant used in the composition based on the specific fluoropolymer employed and the desired degree of stability.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl et al. (WO 90/15828) as applied to claim 1 above, and further in view of Murphy (US Patent No. 5409997).

Dahl et al. discloses the basic claimed method for radiation grafting, as set forth above, with respect to claim 1.

Regarding claims 5, 6, and 8; Dahl et al. fails to teach a metal salt of the required instant formulae. Murphy teaches a method for forming a melt processible

fluoropolymer having a thermally stable, non-volatile coagent, such as zinc diacrylate (reads on $(\text{CH}_2=\text{CH}-\text{COO}^-)_n\text{M}^{n+}$, instant claim 6) [col3, line29-51], added prior to irradiation (instant claim 5) [col6, line1-34, T1], wherein the fluoropolymer and coagent are present in a weight ratio of about 99.9-90:0.1-10.0 (instant claim 8) [col13, line20-22, clm2]. Murphy and Dahl et al. are analogous art because both are concerned with the same field of endeavor, namely fluoropolymers used for coating wires and/or cables. At the time of the invention, a person having ordinary skill in the art would have found it obvious to combine the zinc diacrylate stabilizer, as taught by Murphy, with the method for radiation grafting, as taught by Dahl et al., and would have been motivated to do so in order to produce a fluoropolymer having improved mechanical properties at elevated temperatures and improved temperature aging performance, as suggested by Murphy [col3, line52-64].

Regarding claim 7; the limitations of claim 7, merely define aspects of the third formula of instant claim 6 ($(\text{CH}_2=\text{CH}-\text{Q}-\text{COO}^-)_n\text{M}^{n+}$), therefore making the limitations of claim 7 optional, wherein claim 6 is rejected by either one of the first two formulae ($(\text{CH}_2=\text{CH}-\text{COO}^-)_n\text{M}^{n+}$ or $(\text{CH}_2=\text{C}(\text{CH}_3)-\text{COO}^-)_n\text{M}^{n+}$).

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl et al. (WO 90/15828) as applied to claim 1 above, and further in view of Gotcher et al. (US Patent No. 4353961).

Dahl et al. discloses the basic claimed method for radiation grafting, as set forth above, with respect to claim 1.

Regarding claims 12 and 13; Dahl et al. fails to teach the fluoropolymer is PVDF, which contains at least 85% VDF by weight. Gotcher et al. teaches melt-processible fluorocarbon polymer compositions, wherein suitable fluoropolymers include ethylene-tetrafluoroethylene (ETFE) and vinylidene fluoride (VDF) homopolymers (PVDF, 100% VDF monomers; instant claim 13) [col2, line63-68]. Therefore, Gotcher et al. teaches that ETFE and PVDF are functional equivalents for the purpose of producing melt-processible fluoropolymers for wire coatings. It is *prima facie* obvious to substitute art-recognized functional equivalents known for the same purpose (See MPEP § 2144.06).

Response to Arguments

Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection. Murphy was relied upon as a secondary reference, for the teaching of a method for forming a melt processible fluoropolymer having a thermally stable, non-volatile coagent, such as zinc diacrylate, added prior to irradiation.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Paul whose telephone number is (571)270-5453. The examiner can normally be reached on Monday thru Friday 8:00- 6:00p; alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

Jessica Paul
Examiner
Art Unit 1796

/JMP/